

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Jonathan Leite, *

*

Plaintiff *

*

v. *

Case No. 1:15-cv-00280-PB

*

Corrections Officers Matthew Goulet, *

Elmer Van Hoesen, Michael Beaton, Lynn McLain, *

Heather Marquis, Trevor Dube, Rhianne Snyder, *

Eddy L'Heureux, Jeffrey Smith, Dwane Sweatt, *

Yair Balderrama, Bob Morin, Ejike Esobe, and *

Kathy Bergeron *

*

Defendants *

OBJECTION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

NOW COMES the plaintiff Jonathan Leite, by and through his attorneys Douglas, Leonard & Garvey, P.C., and respectfully submits the within Objection to Motion for Summary Judgment, stating as follows:

1. Jonathan Leite entered the custody of the New Hampshire Department of Corrections on or about December 31, 2011, a fully functional man, the father of two (2) children, who ran his own residential construction business. When Mr. Leite left the custody of the New Hampshire Department of Corrections in January of 2014, he suffered from severe injuries (including a traumatic brain injury and PTSD) resulting from a brutal assault he suffered at the hands of other inmates on August 24, 2012. Mr. Leite's injuries from the prison assault have proven so severe that the Social Security Administration has awarded him disability benefits, and his expert Dr. Albert M. Drukteinis has opined that the effects of Mr. Leite's traumatic brain injury are permanent, that he will need psychiatric medication and mental health treatment indefinitely, and that the prognosis for him to enter the workforce is "guarded," with

no likelihood that he would ever be able to return to work in the residential construction trade at the level at which he functioned before his incarceration.

2. Mr. Leite has alleged two (2) theories of liability arising under 42 U.S.C. §1983 against the defendant correctional officers. He alleges deliberate indifference to his serious medical needs against the defendants Bergeron, Dube, Esobe and McLain based on their conduct contributing in whole or in part to a delay of 2.5 hours between the time of the assault and the time correctional officers finally procured Mr. Leite medical attention. He further alleges that the defendant McLain is liable under Section 1983 for failure to protect him from an assault by other inmates. The Court should deny summary judgment with respect to these claims against the defendants Bergeron, Dube, Esobe and McLain because there are genuine issues of material fact and judgment as a matter of law is not warranted.

3. Based on the extensive pretrial discovery conducted, Mr. Leite does not object to the entry of summary judgment with respect to the claims against the other defendants.

4. Legal arguments in support of Mr. Leite's Objection to Motion for Summary Judgment are more fully set forth in the accompanying Memorandum of Law.

WHEREFORE, the plaintiff Jonathan Leite respectfully prays this Honorable Court:

- A. Deny summary judgment as to this claims against the defendants Kathleen Bergeron, Trevor Dube, Ejike Esobe and Lynn McLain; and
- B. Grant such other and further relief as is just and equitable.

Respectfully submitted,
JONATHAN LEITE
By his attorneys,
DOUGLAS, LEONARD & GARVEY, P.C.

Date: December 18, 2017

By: /s/ Benjamin T. King
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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing was filed electronically via the CM/ECF system and will be sent electronically to the registered participants and via first class mail to the non-registered participants as identified on the Notice of Electronic Filing.

/s/Benjamin T. King
Benjamin T. King